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OGC 81-08384

5 October 1981

MEMORANDUM FOR: Director of Personnel

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FROM:

Associate General Counsel

SUBJECT: Contracts for Personal Services

1. In an effort to take all possible steps to avoid Agency association with persons whose business and other interests are incompatible with United States Government interests, the following steps have been taken. The Personal History Statements have been revised to require, in addition to information on previous and current business activities, identification of any litigation or other activities which could discredit the individual or the government. This issue is also being covered in the Security investigation.

2. It is suggested that the following additional steps also be taken.

a. The Personal History Statement should be expanded to require individuals to list (1) all sources of income for the past year for which they received over \$1,000 and the nature of the services rendered; (2) all current sources generating income of over \$1,000 and the nature of the services rendered; and (3) the nature and proposed recipients of all services they will be rendering during the coming year which they anticipate will generate income of over \$1,000, along with a requirement for prompt amendment where the facts or circumstances previously reported materially change.

b. All existing personal services contracts should be amended to include, and all new personal services contracts should include, a provision that the individual will be held to the same code of conduct as Agency employees and will have to file Outside Activity Approval requests for any outside business activities or contacts with

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SUBJECT: Case

CONCUR:

Deputy Director for Administration

Date

Director of Logistics

Date

APPROVED:

Director of Central Intelligence

Date

Disclosure of Solicitation by Persons or Commercial Concerns
Purporting to be Affiliated with or Part of the Sponsor's Activities

1. The Contractor covenants to make expressly known to the Contracting Officer as promptly as possible, but in no event later than twenty-four (24) hours after receipt of such knowledge, any representation by any person or commercial concern soliciting Contractor's services that purports or creates the inference that they are or have been affiliated with Sponsor's organization or any subdivision thereof where the bona fides of that person or commercial concern have not been established unequivocally by the Sponsor.

2. The term "Contractor" as used herein, means the Contractor's directors, officers and any of his managerial personnel, superintendents or other equivalent representatives who are cleared and witting of this contract and have supervision or direction of:

(i) All or substantially all of the Contractor's business; or

(ii) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract; or

(iv) Project manager or equivalent for the technical effort subject of this contract; or

(v) Contract administrator or equivalent who has authority to entering binding agreements on behalf of the Contractor.

3. Compliance with this clause is considered to be the Contractor's responsibility and an essential element of the contract. Specifically, it is agreed and understood that this notification provision goes to the essence of the overall agreement between the Government and the Contractor.

4. Failure to comply with the reporting requirement established herein due to willful act, negligence, or lack of good faith of the Contractor's personnel as defined in paragraph 2 of this clause, shall be grounds for termination of this contract for default in accordance with the applicable termination or default provision of this contract except that there shall be no requirement for a cure notice.

5. Compliance with this clause is also a factor in determining the responsibility of the Contractor. It is in addition to the general policy regarding responsibility and responsible prospective Contractors as those terms are used in DAR Section I, Part 9.

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RESTRICTIONS APPLICABLE TO RETIRED MILITARY PERSONNEL

General

Retired members are not expected to engage in personal or professional activities which are incompatible with the standards of conduct expected of them while on active duty. Department of Defense Directive 5500.7, Standards of Conduct, 8 August 1967, as implemented by directives issued by each of the services, prescribes standards of conduct for present and former members of the Department of Defense, including retired members of all of the Armed Forces.

Since it is not possible to cover all the provisions of law which restrict the activities of retired personnel, only some of the more important provisions will be discussed in this section. Whenever a retired member has any doubt as to whether he or she may be in violation of a particular law if he or she accepts employment with the Federal Government or with a firm doing business with the Government, the member is strongly urged to obtain advice on the matter before making a commitment for such employment. Legal Assistance Offices at most military installations can provide such advice. Additionally, all retired officers should be familiar with the possible requirement to report their employment activities as discussed in the paragraph on Employment Reports.

The Ethics in Government Act (P.L. 95-521), places additional restrictions on post retirement employment for all flag rank officers. After 1 July 1979 all flag rank officers are forbidden to represent any private employer in dealing with the government on issues for which they had responsibility during their last year on active duty, for a period of two years following retirement from the service. The Act also tightens existing bans on representing outside interests before the Government on matters in which the officer had "personal and substantial" dealings while in the Service. In addition, the Act requires financial disclosure reports on outside income and other financial activities while on active duty.

The Defense Department and the individual services are in the process of developing implementing directives regarding this Act. Individuals who feel they may be affected by the new law should contact the Legal Affairs office of their respective service for clarification of their status.

Employment in the DoD

All retired members of the Uniformed Services may accept civilian employment by the Federal Government. However, statutes place a limitations on the amount of retired pay that retired commissioned officers and warrant officers of a regular component may receive while also receiving civilian salary from the Federal Government or the District of Columbia for employment in a civilian office. Employment by the Federal Government is prohibited for a period of 180 days following retirement, including employment by non appropriated fund instrumentalities under the jurisdiction of the Armed Forces. (See the Section on Employment of Retired Military Personnel - Dual Compensation, for additional details concerning computations for earnings limitations and exceptions.)

RETIRED MILITARY ALMANAC

Non Government Employment

Generally speaking there is no provision of Federal law or regulations which prevent a retiree from being employed by a domestic business or industrial concern. There are no restrictions as to the amount of compensation a retired member may receive from private employment, nor does the receipt of salary reduce the amount of retired pay received. However, there are certain restrictions as to the types of activities which the retiree can perform. These restrictions apply primarily to retired commissioned and warrant officers and do not ordinarily apply to retired enlisted members.

Conflict of Interest

Prohibited activities for *all* retired commissioned officers and warrant officers, both regular and reserve are:

1. Representing at any time after retirement, anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government.

2. Representing for one year after retirement, anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during the last year of Government service.

Additional restrictions applicable to *Regular* commissioned and Warrant officers include:

1. Assisting at any time, in prosecuting a claim against the United States if they worked on that claim while on active duty.

2. Assisting in prosecuting a claim within two years after retirement, which involves the department in whose service they hold a retired status.

3. Selling anything to the Military Department in whose service the officer hold a retired status.

4. Selling supplies or war materials to any agency of the DoD, the U.S. Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service, within three years after retirement.

A retired regular officer is also prohibited at all times, from receiving or agreeing to receive any compensation for representing any person in the sale of anything to the Government through the Military Department in whose service the officer holds retired status. (Note: "Selling" as referred to above means, signing a bid, proposal, or contract; negotiating a contract; contacting an officer or employee of the DoD, U.S. Coast Guard, NOAA, and the USPHS for the purpose of:

1. Obtaining or negotiating contracts.

2. Negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract.

3. Settling disputes concerning performance of a contract.

4. Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person.

Employment Reports

Department of Defense Directive 5500.7, Standards of Conduct, requires that each *Regular* retired commissioned and warrant officer of the Armed Forces file a statement of Employment (DD Form 1357) with the Military Service from which retired, whether or not the officer is employed. This statement must be filed within thirty days after retirement and whenever the information in the statement is no longer accurate.

The DD Form 1357 may be obtained from and submitted to the officer's servicing Finance Center.

Department of Defense Directive 7700.15, Reporting Procedures on Defense Related Employment, dated 30 October 1970, requires that retired *Regular and Reserve* officers who served on extended active duty for at least 10 years and were serving in the grade of major or above, at the time of retirement, must file a Report of Department of Defense and Defense Related Employment (DD Form 1787), if: (a) retired not more than three years prior to the beginning of the Fiscal Year; (b) during any part of the Fiscal Year, was employed by or performed services for a defense prime contractor at a salary rate of at least \$15,000 per year; and (c) such defense prime contractor received at least \$10 million of negotiated defense contracts during the Fiscal Year.

Any retiree who is required to file this report and fails to do so for any reason is subject to a penalty of six months imprisonment, a fine of \$1,000, or both. Therefore, if there is any question as to whether the report is required or where to file such reports, the retiree is strongly urged to contact a Legal Assistance Officer at any military installation for guidance.

Foreign Employment

The primary restriction on foreign employment of retired personnel is contained in Article 1, Section 9a, Clause 8 of the Constitution of the United States. This provision has been interpreted to prohibit the employment of all retired personnel, commissioned or warrant officers or enlisted personnel, *Regular or Reserve, by a foreign government, unless Congressional consent is first granted.* Employment by educational or commercial institutions owned, operated or controlled by a foreign government is included within the scope of this restriction.

There are three procedures which may be utilized in obtaining Congressional consent. These are as follows:

1. By private legislation authorizing specific foreign employment.
2. Authority may be obtained from the President. He is permitted to detail members of the Uniformed Services to assist in military matters upon the request of certain countries.
3. Section 509, PL 95-105, grants permission by the Congress to all retired members of the Armed Forces to accept employment and compensation from any foreign government or entity as to which the applicable provisions of the Constitution would require Congressional consent, subject to the approval of the Secretary of their Military Service and the Secretary of State. Retired members who wish to accept such employment should apply to their Service Secretary through military channels.

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Retirement Overseas

Retired military personnel are not generally restricted from traveling or residing overseas. Retired members are subject to the same State Department requirements as all other United States citizens and must possess valid passports. Certain individuals who have had travel restrictions imposed while on active duty because their duties involved special security information, may be restricted from travel to overseas areas until the period of their restrictions is completed. Individuals subject to such travel restrictions will be advised during their security debriefings prior to retirement.

Individuals who plan to reside overseas are generally required to notify their servicing Finance Centers and may be required to file a Monthly Report of Existence or Certificate of Entitlement to insure continuation of retirement pay. (See the section on Retirement Pay for additional details)

Security Program. All retired military personnel have a continuing responsibility for safeguarding classified information of which they have knowledge. In accordance with DoD Directive 5200.1, each member having access to classified material is required to sign a security termination statement in which it is stated that the member has no classified materials or documents in his or her possession, that no classified information will be divulged either orally or by any other means to an unauthorized individual or agency and that the member will immediately report to the FBI or proper military authority any attempt by such an unauthorized individual or agency to obtain classified information. Retired members who fail to observe the espionage or internal security laws are subject to prosecution, fine, and imprisonment as well as loss of eligibility for retired pay.

Speeches and Publication of Articles. There is no requirement that retired military personnel submit copies of articles or speeches to the DoD or applicable branch of service for clearance. Such writings and public statements are, of course, the responsibility of the individual with regard to protection of information dealing with National Security. If any doubt exists, the author may submit the material for review to the Chief of Information of the applicable service. Statements to the effect that any opinions expressed are those of the author and not the DoD or service branch are useful in clarifying the status of the article or statement.

Use of Military Titles. All Retired personnel are permitted to use their military titles subject to certain restrictions and the exercise of good judgement. Although military titles may be used in conjunction with commercial enterprises, such use must never cast discredit on the military services or the Department of Defense. The use of military titles is *prohibited* in connection with commercial enterprises when such use, with or without the intent to mislead, gives rise to any appearance of sponsorship, sanction, endorsement, or approval by the military services or the Department of Defense.

When military titles are used the member must show that he is in a retired status. Social and business calling cards may be of the same size and format as used on active duty, but must reflect the retired status of the individual.